

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 19, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ENEDELIA M.,

Plaintiff,

v.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 1:20-CV-03043-FVS

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 18 and 19. This matter was submitted for consideration without oral argument. The Plaintiff is represented by Attorney Victoria B. Chhagan. The Defendant is represented by Special Assistant United States Attorney Jeffrey E. Staples. The Court has reviewed the administrative record, the parties' completed briefing, and is fully informed. For the reasons discussed below, the Court **GRANTS** Plaintiff's Motion for Summary Judgment, ECF No. 18, and **DENIES** Defendant's Motion for Summary Judgment, ECF No. 19.

JURISDICTION

Plaintiff Enedelia M.¹ protectively filed for disability insurance benefits on November 30, 2016, alleging an onset date of May 15, 2015. Tr. 234-42. Benefits were denied initially, Tr. 140-46, and upon reconsideration, Tr. 149-55. Plaintiff appeared for a hearing before an administrative law judge (“ALJ”) on August 23, 2018. Tr. 52-97. Plaintiff was represented by counsel and testified at the hearing. *Id.* The ALJ denied benefits, Tr. 12-32, and the Appeals Council denied review. Tr. 1. The matter is now before this court pursuant to 42 U.S.C. § 405(g).

BACKGROUND

The facts of the case are set forth in the administrative hearing and transcripts, the ALJ’s decision, and the briefs of Plaintiff and the Commissioner. Only the most pertinent facts are summarized here.

Plaintiff was 50 years old at the time of the hearing. Tr. 92. She completed eleventh grade. Tr. 92-93, 276. Plaintiff lives with her husband and her three adopted grandchildren. Tr. 59. Plaintiff has work history as a home attendant, bartender, housekeeper, retail store manager, motel manager, and waitress. Tr. 60-62, 72-80, 90-92. Plaintiff testified that she could not work full-time because of right upper extremity pain, anxiety, and fatigue. Tr. 72-73. Plaintiff testified that

¹ In the interest of protecting Plaintiff’s privacy, the Court will use Plaintiff’s first name and last initial.

1 her pain starts at the top of her right shoulder and “shoots down” her neck into her
2 right arm and fingers. Tr. 64. She gets tingling in her fingers, weakness in her
3 hand, and shooting pain all the way from her shoulder down to her hand. Tr. 64-
4 65. Plaintiff testified that she has difficulty grabbing and twisting with her right
5 hand. Tr. 65. She also reported that she is experiencing depression because she
6 does not “have the ability or strength” to do the things she used to do. Tr. 69-71.

7 STANDARD OF REVIEW

8 A district court’s review of a final decision of the Commissioner of Social
9 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
10 limited; the Commissioner’s decision will be disturbed “only if it is not supported
11 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,
12 1158 (9th Cir. 2012). “Substantial evidence” means “relevant evidence that a
13 reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1159
14 (quotation and citation omitted). Stated differently, substantial evidence equates to
15 “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and
16 citation omitted). In determining whether the standard has been satisfied, a
17 reviewing court must consider the record as a whole rather than searching for
18 supporting evidence in isolation. *Id.*

19 In reviewing a denial of benefits, a district court may not substitute its
20 judgment for that of the Commissioner. If the evidence in the record “is
21 susceptible to more than one rational interpretation, [the court] must uphold the

1 ALJ's findings if they are supported by inferences reasonably drawn from the
2 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district
3 court "may not reverse an ALJ's decision on account of an error that is harmless."
4 *Id.* An error is harmless "where it is inconsequential to the [ALJ's] ultimate
5 nondisability determination." *Id.* at 1115 (quotation and citation omitted). The
6 party appealing the ALJ's decision generally bears the burden of establishing that
7 it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

8 **FIVE-STEP EVALUATION PROCESS**

9 A claimant must satisfy two conditions to be considered "disabled" within
10 the meaning of the Social Security Act. First, the claimant must be "unable to
11 engage in any substantial gainful activity by reason of any medically determinable
12 physical or mental impairment which can be expected to result in death or which
13 has lasted or can be expected to last for a continuous period of not less than twelve
14 months." 42 U.S.C. § 423(d)(1)(A). Second, the claimant's impairment must be
15 "of such severity that he is not only unable to do his previous work[,] but cannot,
16 considering his age, education, and work experience, engage in any other kind of
17 substantial gainful work which exists in the national economy." 42 U.S.C. §
18 423(d)(2)(A).

19 The Commissioner has established a five-step sequential analysis to
20 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §
21 404.1520(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's

1 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in
2 “substantial gainful activity,” the Commissioner must find that the claimant is not
3 disabled. 20 C.F.R. § 404.1520(b).

4 If the claimant is not engaged in substantial gainful activity, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers
7 from “any impairment or combination of impairments which significantly limits
8 [his or her] physical or mental ability to do basic work activities,” the analysis
9 proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant’s impairment
10 does not satisfy this severity threshold, however, the Commissioner must find that
11 the claimant is not disabled. 20 C.F.R. § 404.1520(c).

12 At step three, the Commissioner compares the claimant’s impairment to
13 severe impairments recognized by the Commissioner to be so severe as to preclude
14 a person from engaging in substantial gainful activity. 20 C.F.R. §
15 404.1520(a)(4)(iii). If the impairment is as severe or more severe than one of the
16 enumerated impairments, the Commissioner must find the claimant disabled and
17 award benefits. 20 C.F.R. § 404.1520(d).

18 If the severity of the claimant’s impairment does not meet or exceed the
19 severity of the enumerated impairments, the Commissioner must pause to assess
20 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),
21 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
2 404.1545(a)(1), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's
4 RFC, the claimant is capable of performing work that he or she has performed in
5 the past (past relevant work). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is
6 capable of performing past relevant work, the Commissioner must find that the
7 claimant is not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of
8 performing such work, the analysis proceeds to step five.

9 At step five, the Commissioner considers whether, in view of the claimant's
10 RFC, the claimant is capable of performing other work in the national economy.
11 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner
12 must also consider vocational factors such as the claimant's age, education and
13 past work experience. 20 C.F.R. § 404.1520(a)(4)(v). If the claimant is capable of
14 adjusting to other work, the Commissioner must find that the claimant is not
15 disabled. 20 C.F.R. § 404.1520(g)(1). If the claimant is not capable of adjusting to
16 other work, analysis concludes with a finding that the claimant is disabled and is
17 therefore entitled to benefits. 20 C.F.R. § 404.1520(g)(1).

18 The claimant bears the burden of proof at steps one through four above.
19 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
20 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
21 capable of performing other work; and (2) such work "exists in significant

1 numbers in the national economy.” 20 C.F.R. § 404.1560(c)(2); *Beltran v. Astrue*,
2 700 F.3d 386, 389 (9th Cir. 2012).

3 **ALJ’S FINDINGS**

4 At step one, the ALJ found that Plaintiff has not reported earnings at the
5 level of substantial gainful activity since May 15, 2015. Tr. 18. At step two, the
6 ALJ found that Plaintiff has the following severe impairments: degenerative joint
7 disease and diabetes. Tr. 18. At step three, the ALJ found that Plaintiff does not
8 have an impairment or combination of impairments that meets or medically equals
9 the severity of a listed impairment. Tr. 20. The ALJ then found that Plaintiff has
10 the RFC “to perform light work as defined in 20 CFR 404.1567(b) except the
11 claimant: can occasionally crawl; cannot climb ladders, ropes, or scaffolds; can
12 occasionally reach overhead and to the side bilaterally.” Tr. 21. At step four, the
13 ALJ found that Plaintiff is capable of performing past relevant work as a
14 housekeeping cleaner, bartender, hotel and retail manager, and waitress. Tr. 25. In
15 the alternative, at step five, the ALJ found that considering Plaintiff’s age,
16 education, work experience, and RFC, there are other jobs that exist in significant
17 numbers in the national economy that Plaintiff also can perform, including:
18 production line assembler, electrical accessories assembler, and marker. Tr. 26 On
19 that basis, the ALJ concluded that Plaintiff has not been under a disability, as
20 defined in the Social Security Act, from May 15, 2015, through the date of the
21 decision. Tr. 26-27.

ISSUES

Plaintiff seeks judicial review of the Commissioner’s final decision denying her disability insurance benefits under Title II of the Social Security Act. ECF No. 18. Plaintiff raises the following issue for this Court’s review: whether the ALJ properly weighed the medical opinion evidence.

DISCUSSION

A. Medical Opinions

There are three types of physicians: “(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant [but who review the claimant's file] (nonexamining [or reviewing] physicians).” *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th Cir. 2001)(citations omitted). Generally, a treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more weight than a reviewing physician's. *Id.* If a treating or examining physician's opinion is uncontradicted, the ALJ may reject it only by offering “clear and convincing reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.2005). Conversely, “[i]f a treating or examining doctor's opinion is contradicted by another doctor's opinion, an ALJ may only reject it by providing specific and legitimate reasons that are supported by substantial evidence.” *Id.* (citing *Lester v. Chater*, 81 F.3d 821, 830–831 (9th Cir. 1995)).

1 “However, the ALJ need not accept the opinion of any physician, including a
2 treating physician, if that opinion is brief, conclusory and inadequately supported
3 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
4 (9th Cir. 2009) (quotation and citation omitted).

5 The opinion of an acceptable medical source such as a physician or
6 psychologist is given more weight than that of an “other source.” *See* SSR 06-03p
7 (Aug. 9, 2006), *available at* 2006 WL 2329939 at *2; 20 C.F.R. § 416.927(a).

8 “Other sources” include nurse practitioners, physician assistants, therapists,
9 teachers, social workers, and other non-medical sources. 20 C.F.R. §§
10 404.1513(d), 416.913(d). The ALJ need only provide “germane reasons” for
11 disregarding an “other source” opinion. *Molina*, 674 F.3d at 1111. However, the
12 ALJ is required to “consider observations by nonmedical sources as to how an
13 impairment affects a claimant's ability to work.” *Sprague v. Bowen*, 812 F.2d
14 1226, 1232 (9th Cir. 1987).

15 Plaintiff argues the ALJ erroneously considered the opinions of treating
16 providers Gloria Abacan, M.D. and Jonathon McJilton, PA-C. ECF No. 18 at 3-9.
17 In December 2016, Dr. Abacan noted that Plaintiff was diagnosed with AC joint
18 arthrosis, tendinosis of the supraspinatus and subscapularis, subdeltoid bursitis, and
19 carpal tunnel syndrome below the elbow. Tr. 329. She listed clinical findings of
20 tenderness in the right AC joint, medial and lateral epicondyle, and limited
21 abduction of the right shoulder. Tr. 329. Dr. Abacan opined that Plaintiff would

1 miss one to two weeks per month if she attempted to work a 40-hour per week
2 schedule; and she limited Plaintiff to light work with only occasional reaching with
3 her right upper extremity. Tr. 329-30. The ALJ assigned partial weight to Dr.
4 Abacan's opinion and found the "exertional and manipulative restriction is
5 consistent with the longitudinal evidence of record and the other opinions of
6 record; however, the opinion regarding missed work due to her impairments is
7 inconsistent with the record." Tr. 24.

8 In December 2016, Mr. McJilton noted that Plaintiff was diagnosed with
9 degenerative joint disease of her right AC joint, and cited clinical findings of
10 tenderness to palpation and clavicle, positive empty can test, positive Hawkins test,
11 positive Mazion test, pain with extension, and pain with internal rotation. Tr. 331.
12 Mr. McJilton opined that Plaintiff was limited to light work with only occasional
13 reaching with her right upper extremity. Tr. 332. The ALJ gave great weight to
14 Mr. McJilton's opinion because it was generally consistent with the evidence of
15 record. Tr. 24.

16 Plaintiff argues that the ALJ "did not adequately explain why he accepted
17 the opinions of [Plaintiff's] treating medical providers limiting her to occasional
18 reaching, yet only included limitations to overhead and lateral reaching in his
19 residual functional capacity (RFC) finding." ECF No. 18 at 3. The Court agrees.
20 "The ALJ is responsible for translating and incorporating clinical findings into a
21 succinct [RFC]." *Rounds v. Comm'r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th

1 Cir. 2015); *see also Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1271, 1223 (9th Cir.
2 2010) (an ALJ’s findings need only be consistent with a physician’s credited
3 limitations, not identical to them). However, as per Social Security Ruling (SSR)
4 96-8p, the ALJ “must always consider and address medical source opinions. If the
5 RFC assessment conflicts with an opinion from a medical source, the adjudicator
6 must explain why the opinion was not adopted.” SSR 96-8p, *available at* 1996 WL
7 374184 at *7 (Jul. 2, 1996). Here, as noted by Plaintiff, the ALJ “provided no
8 basis” for “interpret[ing] the medical opinions limiting [Plaintiff] to occasional
9 reaching as a limitation to occasional overhead and lateral reaching with no
10 limitation in forward reaching.” ECF No. 18 at 8. Notably, Defendant concedes
11 that “Plaintiff is correct that the evidence, including medical and other opinions
12 that the ALJ credited, supports a limitation to only occasional reaching (in any
13 direction) with her right arm.” ECF No. 19 at 2 (citing Tr. 24, 329-30, 332).
14 Based on the foregoing, the Court finds the ALJ erred by failing by either
15 providing the requisite reasons to reject Dr. Abacan and Mr. McJilton’s opinion
16 that Plaintiff was limited to occasional reaching in the forward direction, or to
17 specifically incorporate this limitation into the assessed RFC along with occasional
18 reaching overhead and laterally. *See Marsh v. Colvin*, 792 F.3d 1170, 1173 (9th
19 Cir. 2015) (failure to address medical opinion was reversible error); *Robbins v.*
20 *Soc. Sec. Admin.*, 466 F.3d 880, 886 (9th Cir. 2006) (“an ALJ is not free to
21 disregard properly supported limitations”).

1 As a final matter, Defendant argues that “Plaintiff is wrong to claim that the
2 ALJ’s failure to include this limitation in the residual functional capacity
3 assessment was harmful in this case.” ECF No. 19 at 2-4. An error is harmless
4 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
5 *See Molina*, 674 F.3d at 1115. Specifically, Defendant argues that at step four “the
6 ALJ found Plaintiff could return to her past relevant work as a hotel manager and
7 retail manager, among other jobs. These jobs require only occasional reaching in
8 any direction, and therefore would not be undermined by a limitation to only
9 occasional reaching with the right arm in any direction.” ECF No. 19 at 2-3 (citing
10 DOT 185.167-046, *available at* 1991 WL 671299 (manager, retail store); DOT
11 187.117-038, *available at* 1991 WL 671352 (manager, hotel or motel)). Plaintiff
12 argues “the Court should remand this case for further proceedings in order to
13 determine the vocational significance of an occasional forward limitation on her
14 past relevant semi-skilled and skilled work.” ECF No. 20 at 2. The Court agrees.

15 Here, in the first hypothetical question posed to the VE, the ALJ included a
16 limitation to light work with occasional overhead reaching only; and the VE
17 testified that this hypothetical individual could perform Plaintiff’s past relevant
18 work as a waitress, motel manager, and retail manager. Tr. 92-93. In the second
19 hypothetical, the ALJ added the limitation of simple, routine, repetitive tasks; and
20 the VE testified that this hypothetical individual could perform Plaintiff’s past
21 relevant work as a housekeeper/cleaner, in addition to “other jobs” of production

1 line sauderer, electrical accessories assembler, and marker. Tr. 93-94. In the third
2 hypothetical, the ALJ added a limitation to lateral reaching; and the VE testified
3 that would “not eliminate or affect any of these jobs.” Tr. 94. Finally, Plaintiff’s
4 representative questioned the VE as follows:

5 ATTY: So if we took the Judge’s second hypothetical but then also added
6 that the individual would be limited to with her right upper extremity, be
7 limited to occasional reaching in any direction, would there be any other –
would they be able to do the jobs that you listed or any other jobs in the
regional or national economy?

8 VE: No. All the jobs I provided would be eliminated as well as the labor
9 market. It would also erode the labor market. Further the issue would look
10 at it as simple and repetitive or routine level of jobs is that the individual
would be doing some type of assembly, whether it’s assembling pieces of
11 metal or pieces of paper, there’s going to be some type of assembly work.
At the very least, the reaching specifically in front is going to be at the
frequent level and so as a minimum. And so restricting the reach in all
12 directions is going to erode the labor market.

13 Tr. 95-96.

14 Based on this testimony, Defendant argues that a limitation to occasional
15 reaching is only “work-preclusive” when paired with a restriction to “simple jobs,”
16 and therefore “as the DOT shows, the omitted restriction does not affect the ALJ’s
17 reliance on Plaintiff’s higher-skilled past relevant work.” ECF No. 19 at 4. This
18 argument is unavailing. As noted by Plaintiff, “this testimony only addresses the
19 impact of occasional reaching in all directions on unskilled work. That is because
20 the VE was not asked about the impact of occasional reaching in all directions on
21 [Plaintiff’s] past semi-skilled and/or skilled work. The VE should be asked this
question on remand.” ECF No. 20 at 4. In support of this argument, Plaintiff notes

1 that the DOT listing for waitress and bartender, both jobs the VE testified did *not*
2 require frequent overhead or lateral reaching, nonetheless have a general DOT
3 reaching requirement of “frequent.” ECF No. 20 at 5 (citing DOT 312.474-010,
4 *available at* 1991 WL 672698; DOT 311.477-030, *available at* 1991 WL 672688).
5 Thus, any error by the ALJ cannot be harmless because “the DOT does not
6 differentiate between overhead, lateral, and forward reaching, [so] it is necessary to
7 look to the VE testimony for clarification.” ECF No. 20 at 5. While not cited by
8 either party, this conclusion is further supported by the VE’s own testimony that
9 her statements are not consistent with the DOT “as far as the reaching is concerned
10 because the DOT does not provide information on the levels of reaching, [so]
11 that’s based on my professional experience, education and training and observation
12 of these jobs over the years.” Tr. 94-95.

13 For all of these reasons, the record, as it stands, does not permit the Court to
14 conclude that the ALJ’s error in considering the treating medical opinions is
15 harmless based solely on the DOT’s general guidance on “reaching” restrictions
16 without further distinction as to overhead, forward, and lateral reaching. *See* SSR
17 00-4p, *available at* 2000 WL 1898704 at *2 (ALJ is required to “explain in the
18 determination or decision how he or she resolved the conflict [between the expert’s
19 testimony and the DOT]”); *Molina*, 674 F.3d at 1115 (error is harmless only
20 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”).
21 Because the hypothetical RFC posed to the vocational expert did not accurately

1 reflect all of Plaintiff's limitations, the expert's testimony has no evidentiary value
2 to support the ALJ's step five finding that plaintiff can perform jobs in the national
3 economy. *Robbins*, 466 F.3d at 886. Accordingly, the ALJ's step five
4 determination is unsupported by substantial evidence. Because the ALJ erred by
5 failing to either reject or properly incorporate Dr. Abacan and Mr. McJilton's
6 opinion that Plaintiff was limited to occasional reaching in all directions, and/or
7 resolve any inconsistency between the DOT and the VE testimony with regard to
8 reaching restrictions, the opinions must be reconsidered on remand, along with the
9 subsequent steps of the sequential analysis.

10 REMEDY

11 The decision whether to remand for further proceedings or reverse and
12 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,
13 888 F.2d 599, 603 (9th Cir. 1989). An immediate award of benefits is appropriate
14 where "no useful purpose would be served by further administrative proceedings,
15 or where the record has been thoroughly developed," *Varney v. Sec'y of Health &*
16 *Human Servs.*, 859 F.2d 1396, 1399 (9th Cir. 1988), or when the delay caused by
17 remand would be "unduly burdensome[.]" *Terry v. Sullivan*, 903 F.2d 1273, 1280
18 (9th Cir. 1990); *see also Garrison*, 759 F.3d at 1021 (noting that a district court
19 may abuse its discretion not to remand for benefits when all of these conditions are
20 met). This policy is based on the "need to expedite disability claims." *Varney*,
21 859 F.2d at 1401. But where there are outstanding issues that must be resolved

1 before a determination can be made, and it is not clear from the record that the ALJ
2 would be required to find a claimant disabled if all the evidence were properly
3 evaluated, remand is appropriate. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96
4 (9th Cir. 2004); *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).

5 The Court finds that further administrative proceedings are appropriate. *See*
6 *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04 (9th Cir. 2014)
7 (remand for benefits is not appropriate when further administrative proceedings
8 would serve a useful purpose). Here, the ALJ improperly considered the medical
9 opinion evidence, which calls into question whether the assessed RFC, and
10 resulting hypothetical propounded to the vocational expert, are supported by
11 substantial evidence. “Where,” as here, “there is conflicting evidence, and not all
12 essential factual issues have been resolved, a remand for an award of benefits is
13 inappropriate.” *Treichler*, 775 F.3d at 1101. Instead, the Court remands this case
14 for further proceedings. On remand, the ALJ should reevaluate the opinions of Dr.
15 Dr. Abacan and Mr. McJilton, as well as all relevant medical opinion evidence. If
16 necessary, the ALJ should order additional consultative examinations and, if
17 appropriate, take additional testimony from medical experts. The ALJ should
18 reassess Plaintiff’s RFC and, if necessary, take additional testimony from a
19 vocational expert which includes all of the limitations credited by the ALJ.

20 **ACCORDINGLY, IT IS HEREBY ORDERED:**
21

1 1. Plaintiff's Motion for Summary Judgment, ECF No. 18, is **GRANTED**,
2 and the matter is **REMANDED** to the Commissioner for additional
3 proceedings consistent with this Order.

4 2. Defendant's Motion for Summary Judgment, ECF No. 19, is **DENIED**.

5 3. Application for attorney fees may be filed by separate motion.

6 The District Court Clerk is directed to enter this Order and provide copies to
7 counsel. Judgment shall be entered for Plaintiff and the file shall be **CLOSED**.

8 **DATED** July 19, 2021.



12 A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

13 Stanley A. Bastian
14 Chief United States District Judge
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